

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF ILLINOIS**

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<b>IN RE:</b>	)	
	)	
<b>GEROLD H. BURNS,</b>	)	<b>No. 99-83458</b>
<b>Debtor.</b>	)	

**OPINION**

Before the Court is the objection filed by GARY RAFOOL, Chapter 7 Trustee (TRUSTEE) to the claim of exemption filed by the Debtor, GEROLD H. BURNS (DEBTOR).

The DEBTOR filed a Chapter 7 petition in Bankruptcy on October 28, 1999. At that time, the DEBTOR had pending a medical malpractice claim for the death of his spouse. The DEBTOR claimed a portion of the proceeds as exempt. The TRUSTEE objected to the DEBTOR's claim of exemption, except to the extent that the award was attributable to the DEBTOR's loss of consortium. A hearing was held on February 22, 2000, and the matter was taken under advisement.

The DEBTOR claims an exemption of \$7,500 under the personal bodily injury exemption of 735 ILCS 5/12-1001(h)(4) and \$975 under the wild card exemption of 735 ILCS 5/12-1001(b). Section 12-1001(h)(4) provides, in pertinent part:

The following personal property, owned by the debtor, is exempt...

(h) The debtor's right to receive, or property that is traceable to:

\* \* \*

(4) a payment, not to exceed \$7,500 in value, on account of personal bodily injury of the debtor or an individual of whom the debtor was a dependent ....

735 ILCS 5/12-1001(h)(4). The DEBTOR contends that he was a dependent of his deceased spouse. At the hearing, the DEBTOR testified that his wife had earned \$9,000 in 1998 and had received social security in the amount of \$5,000. Together, their gross income for 1998 was

\$37,584.

Construing whether the life insurance exemption statute imposed a dependency-in-fact requirement, Judge Meyers, in *In re McLaren*, 227 BR 810 (Bkrcty.S.D.Ill. 1998), noted that a husband and a wife are presumed to be mutually dependent and there need not be an actual showing of dependency.<sup>1</sup> That same rule should apply to the exemption provision at issue here. It reflects the idea that marriage is an economic partnership to which both spouses make equally important contributions, whether they work outside or only in the home. Accordingly, the DEBTOR's claim of exemption is proper.

This Opinion is to serve as Findings of Fact and Conclusions of Law pursuant to Rule 7052 of the Rules of Bankruptcy Procedure.

See written Order.

DATED: March 21, 2000.

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WILLIAM V. ALTENBERGER  
UNITED STATES BANKRUPTCY JUDGE

COPIES TO:  
MR. MARK SKAGGS  
Harry M. Williams & Associates  
414 Hamilton Boulevard, Suite 210  
Peoria, Illinois 61602  
Attorney for Debtor

MR. GARY T. RAFOOL  
Rafool & Bourne

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<sup>1</sup> Construing that same provision, this Court, in *In re Sommer*, 228 B.R. 674 (Bkrcty.C.D.Ill. 1998), stated that the mutual dependency between spouses is a given.

1600 First Financial Plaza  
411 Hamilton Blvd.  
Peoria, Illinois 61602  
Trustee

U.S. TRUSTEE  
401 Main Street, Suite 1100  
Peoria, Illinois 61602

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**ORDER**

For the reasons stated in an OPINION filed this day, IT IS HEREBY ORDERED that the TRUSTEE's objection to the DEBTOR's claim of exemption is OVERRULED.

Dated: March 21, 2000.

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WILLIAM V. ALTENBERGER  
UNITED STATES BANKRUPTCY JUDGE

Copies to:  
Mr. Mark D. Skaggs  
Mr. Gary T. Rafool  
U.S. Trustee